IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 3517 of 2006
TO
FIRST APPEAL NO. 3524 of 2006

AND

FIRST APPEAL NO. 3525 of 2006
TO
FIRST APPEAL No. 3532 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL

THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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SPECIAL LAQ OFFICER - Appellant
Versus
SOMABHAI BHALABHAI HARIJAN & ANOTHER - Defendants

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Appearance :

FIRST APPEAL NO. 3517 of 2006 to FIRST APPEAL NO. 3524 OF 2006

MR SS SHAH, GP FOR THE APPELLANTS

MR AJ PATEL, FOR THE DEFENDANTS

FIRST APPEAL NO. 3525 of 2006 to FIRST APPEAL NO. 3532 OF 2006

MR LR POOJARI, AGP, FOR THE APPELLANTS

MR AJ PATEL, FOR THE DEFENDANTS

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL

and

THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 13/11/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

1. ADMITTED. Mr. A. J. Patel, learned Advocate waives service of notice on behalf of claimant / claimants in each Appeal. Mr. L.R. Poojari, learned Assistant Government Pleader, states at the Bar that the interest of the appellant and that of respondent No.2 is identical and is not in conflict at all. In view of the statement made at the Bar by the learned Assistant Government Pleader, this Court is of the opinion that it is not necessary for the appellant to serve the notice of admission of these appeals upon respondent No.2. Having regard to the facts of the case, the appeals are taken up for final disposal today.

2. These appeals filed under Section 54 of the Land Acquisition Act, 1984 (“the Act” for short) read with Section 96 of the Civil Procedure Code, 1908 are directed against the common judgment and award dated July 5, 2004 rendered by the learned 4th Extra Assistant Judge and Special Judge (L.A.R.), Ahmedabad (Rural), Navrangpura, Ahmedabad in Land Acquisition Case Nos. 115 of 1999 to 130 of 1999 by which the claimants are awarded additional amount of compensation at the rate of Rs.21.70/- (Rupees Twenty One and Seventy paise only) per Square Metre for their acquired lands, over and above the compensation awarded to them at the rate of Rs. 3.30 per Square Metre by the Special Land Acquisition Officer by his award dated February 23, 1998.

3. The Executive Engineer – Narmada Yojana, Division No. 18/4, Mehsana, proposed to the State Government to acquire lands of Village – Suvala, Taluka – Viramgam, District – Ahmedabad for the

public purpose of construction of Narmada Canal. On perusal of the said proposal, the State Government was satisfied that the lands of Village – Suvala, were likely to be needed for the said public purpose. Therefore, the State Government issued Notification under Section 4(1) of the Act which was published in the Official Gazette on June 3, 1995. The land owners were served with the notices under Section 4 of the Act and they opposed the proposed acquisition. After considering their objections, the Land Acquisition Officer forwarded his report to the State Government as contemplated by Section 5A(2) of the Act. On consideration of the said report, the State Government was satisfied that lands of Village – Suvala, which were specified in the Notification published under Section 4(1) of the Act were needed for the public purpose of construction of Narmada Canal. Therefore, declaration under Section 6 of the Act was made which was published in the Official Gazette on March 29, 1996. The interested persons were

thereafter served with notice for determination of amount of compensation payable to them. The claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs. 42.50 paise per Square Metre. However, having regard to the materials placed before him, the Special Land Acquisition Officer by his award dated February 23, 1998, offered to the claimants, compensation at the rate of Rs. 3.30 per Square Metre. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition Officer was totally inadequate. Therefore, they submitted applications under Section 18 of the Act requiring the Special Land Acquisition Officer to refer the matters to the Court for the purpose of determination of just amount of compensation payable to them. Accordingly, references were made to the District Court, Ahmedabad, Navrangpura, where they were registered as Land Acquisition Case Nos. 115 of 1999 to 130 of 1999.

4. On behalf of the claimants, witness – Dahyabhai Magandas Patel was examined at Exhibit – 38. Over and above stating that the lands acquired were highly fertile and that each claimant was earning Rs. 35,000/- to Rs.40,000/- per year per Vigha from sale of agricultural produces, the witness produced previous award of the Reference Court relating to the lands of Village – Fatehpura, Taluka – Viramgam at Exhibit – 37 in support of the case of the claimants for enhanced compensation. The witness asserted before the Reference Court that the lands of Village – Fatehpura which were previously acquired, were similar in all respects to the lands acquired from Village – Suvala and that even the crop pattern was also the same. Though this witness was cross– examined on behalf of the appellants, nothing substantial could be elicited to doubt his assertion that the lands of Village – Fatehpura which were acquired earlier were similar in all respects to the lands of Village – Suvala.

5. On behalf of the appellants, witness – Rameshbhai Ranchhodbhai Rajpal was examined at Exhibit – 48. At the time of tendering evidence before the Court, he was discharging duties as Deputy Executive Engineer, Mehsana. In his Examination–in– Chief, the witness mentioned that the boundaries of Village – Fatehpura and Village – Suvala were adjoining each other whereas in cross – examination, it was admitted by the witness that crop pattern was same in both the villages. Further, it was frankly admitted by the said witness that he had no personal knowledge about the lands acquired in the instant case and was deposing before the Court on the basis of record of the case available with him.

6. On appreciation of evidence adduced by the parties, the Reference Court was of the opinion that previous award of the Reference Court relating to the lands of Village – Fathepura was relevant and furnished good guidance for the purpose of determining the

market value of the lands acquired from Village – Suvala. On the basis of said previous award, the Reference Court has awarded additional amount of compensation to the claimants at the rate of Rs. 21.70 ps. per Square Metre by the impugned award, giving rise to the above numbered appeals.

7. This Court has heard Mr. L.R. Poojari, learned Assistant Government Pleader for the appellants and Mr.A.J.Patel, learned Advocate for the respondents at length and in great detail. This Court has also considered the paper book supplied by the learned Advocate for the claimants which includes oral and documentary evidence adduced by the parties before the Reference Court.

8. Though witness – Dahyabhai Nagardas Patel, who was examined on behalf of the claimants, stated that lands acquired in the instant case were highly fertile and that each claimant was earning net income of Rs. 35,000/-

to Rs. 40,000/- per Vigha per year from the sale of agricultural produces, no evidence could be adduced by the claimants to substantiate the same. The record does not indicate that the claimants claimed enhanced compensation on yield basis or on the basis of comparable sale instances. What was relied upon by the claimants was previous award of the Reference Court relating to the lands of Village – Fatehpura, Taluka Viramgam which was produced at Exhibit – 37. As noticed earlier, it was asserted by witness Dahyabhai Nagardas Patel on behalf of the claimants, that lands of Village – Fatehpura which were acquired previously were similar in all respects to the lands acquired from his village i.e. Village – Suvala and this assertion could not be demonstrated to be untrue. It is well settled that the previous award of Reference Court relating to the adjoining village which has attained finality can be relied upon for the purpose of determining the market value of the lands acquired from the adjoining village. The

testimony of the witness examined by the claimants, in the case would indicate that previous award of Reference Court relating to the lands of Village – Fathepura was relevant piece of evidence and furnished good guidance for the purpose of determining the Market Value of the lands acquired from Village–Suvala. Therefore, this Court is of the opinion that the Reference Court did not commit any error in placing reliance on the previous award of Reference Court relating to the lands of Village – Fatehpura for the purpose of determining market value of the lands in the instant case. Exhibit – 37 would indicate that lands of Village – Fatehpura were acquired by the State Government pursuant to the publication of Notification issued under Section 4(1) of the Act in the Official Gazette on September 5, 1992 for the public purpose of construction of Narmada canal. Therein, the Land Acquisition Officer, by his award dated August 16, 1994, had offered compensation to the claimants at the rate of Rs. 1.25 per Square

Metre for their acquired lands. Feeling aggrieved, references were sought. The Reference Court by judgment and award dated November 12, 2002 awarded to the claimants, total compensation at the rate of Rs. 20/- per Square Metre. The record further shows that Notification under Section 4(1) of the Act was published on September 5, 1992 for the purpose of acquiring the lands of Village – Fatehpura, whereas in the instant case, Notification under Section 4(1) of the Act was published on June 3, 1995 and in view of gap of time of about 2 years and 9 months between the publication of Notifications issued under Section 4(1) of the Act in two cases, the Reference Court was justified in granting benefit of rise in price of lands at the rate of 10% p.a. to the claimants. On overall view of the matter, this Court is satisfied that a just award has been passed by the Reference Court and no ground is made out by the learned Counsel for the appellants to interfere with the same in the instant appeals. On appreciation of the evidence

adduced by the parties, this Court finds that correct findings of facts have been recorded by the Reference Court to which settled provisions of law have been applied. Thus, there is no merit in the appeals and they deserve to be dismissed.

9. For the foregoing reasons, all the appeals fail and are dismissed. There shall be no order as to costs. The Registry is directed to draw decree in terms of this judgment as early as possible.

[J.M.PANCHAL, J.]

[SMT. ABHILASHA KUMARI, J.]

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